

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 90-626-C - ORDER NO. 90-1209  
DECEMBER 28, 1990

IN RE: Application of Southern Bell and     ) ORDER DENYING  
Telegraph Company to avail itself     ) PETITION FOR  
of incentive regulation of its     ) RECONSIDERATION  
Intrastate Operations.     )

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Petition for Reconsideration filed on behalf of Southern Bell Telephone and Telegraph Company (Southern Bell) seeking to have the Commission rehear and/or reconsider its decision to allow the participation of the South Carolina Cable Television Association (SCCTA) in the instant matter. Previously, by Order No. 90-1147, the Commission had ruled on Southern Bell's Return and Opposition to the Petition to Intervene of the SCCTA.

Southern Bell's initial allegations stated that because the SCCTA does not assert that it is a subscriber to any Southern Bell service in South Carolina or a subscriber to any services provided by Southern Bell in South Carolina, the SCCTA is not a proper party in interest and may not, on behalf of its alleged "members", assert that interest. Additionally, Southern Bell alleged that the SCCTA is not an association of cable television providers, rather it is a corporation and a distinct legal entity which may not assert the

rights of its members to be its own. The Commission denied Southern Bell's Return and Opposition and allowed the intervention of the SCCTA, but required that the SCCTA would not be allowed to use its separate and legal corporate entity as an improper "sword or shield" in relation to discovery. The Commission stated that the SCCTA would be a conduit through which information will economically and efficiently pass in order that the proceeding may proceed smoothly.

In response to the Petition for Reconsideration filed by Southern Bell, the SCCTA filed a Return. In its Return, the SCCTA points out that it participated as an association in the generic incentive regulation proceeding, Docket No. 90-266-C, without opposition to its participation. The SCCTA alleges that the instant proceeding is a direct outgrowth of Docket No. 90-266-C, and that it should be allowed to maintain its intervention.

More importantly, the SCCTA points out that it is a non-profit corporation and was formed under S.C. Code Ann., §33-31-10 (1976). Additionally, the SCCTA cited several legal opinions, as well as public policy reasons for allowing the intervention of the SCCTA.

Based upon the information filed by Southern Bell and the SCCTA and information contained in the Commission's files, the Commission makes the following findings and conclusions:

1. That the SCCTA, is a non-profit association incorporated in South Carolina under the provisions of S.C. Code Ann. §33-31-10 (1976).
2. That according to the Certificate of Incorporation, the

SCCTA was incorporated in 1970 and its corporate headquarters is in Myrtle Beach, South Carolina.

3. That under S.C. Code Ann., §33-31-100 (6) (1976) the SCCTA has the power to sue and be sued.

4. The SCCTA is comprised of over 100 member organizations of franchised cable television systems which operate within South Carolina. However, it should be noted that not all of its members would be affected by this incentive regulation filing of Southern Bell.

5. The fact that the SCCTA is an incorporated association should not, under the Court's decision in Dockside Association v. Detyens, Simmons and Carlisle, 287 S.C. 287, 337 S.E.2d 887 (1985), have any adverse impact on the determination of its standing to intervene in the Commission proceeding, as long as its members have an interest in the proceeding. The Commission has previously found that at least some of the members have an interest in this proceeding.

6. That the SCCTA may assert the interest of its members as well as the interest of the Association in this proceeding before the Commission.

7. That the SCCTA properly and timely petitioned the Commission to intervene in this Docket pursuant to R. 103-836 (A)(3) and other applicable provisions of the Commission's Rules of Practice and Proceeding.

8. The SCCTA is a non-profit corporation, organized and existing pursuant to the laws of the State of South Carolina and

that it represents over 100 franchise cable television systems operating within South Carolina.

9. That SCCTA has a vital interest in the instant matter inasmuch as many of its members are users of and rate payers for telephone services provided by Southern Bell. In the instant application, Southern Bell seeks to avail itself of incentive regulation which may have an impact on the SCCTA and many of its members in terms of rates that they pay for regular telephone services offered by Southern Bell.

10. The granting of the intervention of the SCCTA is additionally within the policy of the Commission that standing should be awarded if the party is in a position to present, for the benefit of the agency, some considerations which are important for the agency to know about or act upon. The Commission has traditionally allowed the participation of many divergent parties and interests so that the Commission will have the opportunity to hear from all those that may be affected by a Commission decision.

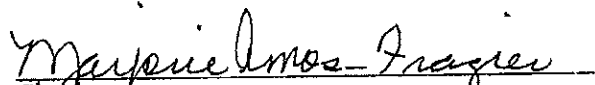
11. The Commission's concerns regarding the conduct of discovery in this proceeding, as well as any other actions of the parties in this proceeding is still well founded. The Commission recognizes that the while the SCCTA may represent a membership of over 100 franchised cable television systems in South Carolina, not all of its members would be impacted by this filing. Therefore, the interests of those cable television systems not in Southern Bell's service area would not be as great as those cable television systems that would be directly impacted.

12. Since the SCCTA is relying on the impact of this filing on its individual members as a basis for its intervention, those individual members should be responsible for responding to any proper discovery request in this docket.

13. That the parties may obtain discovery regarding any ~~matter, not privileged, which is relevant to the subject matter~~ involved in the pending action, whether it relates to the claim or defense of the parties seeking discovery or to the claim or defense of any other party, as long as the information sought appears reasonably calculated to lead to the discovery of admissible evidence. All parties should respond to discovery requests in good faith.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)